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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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VANTAGE FINANCIAL SERVICES, INC.,

Plaintiff,

v.

Civil Action

NONPROFIT SERVICE GROUP and

No. 04-11686-WGY

GEORGE MILLER,

Defendants.
----- X

CONTINUED DEPOSITION of GEORGE E. MILLER

October 7, 2005

12:01 p.m.

Davis, Malm & D'Agostine, P.C.

One Boston Place

Boston, Massachusetts

Reporter: Michael D. O'Connor, RPR

1 A. No, I don't.

2 Q. Do you have a memory of discussing that
3 subject with them at some point?

4 A. Yes. It became apparent that the parties
5 would not reach an agreement without the Shrine
6 getting some assurance that they would be able to
7 pay the cost of the program from the revenue that
8 the program generated. Vantage wanted to reach an
9 agreement with the Shrine.

10 If you look at these early drafts, the risk
11 for the cost of the program is placed on the Shrine.
12 So the question of collateral or security was not an
13 issue then.

14 Q. Was the Shrine position that they wanted
15 only to have to pay for the costs of the program out
16 of the revenues raised from the program or was their
17 position that they didn't want to have to pay for
18 the costs of the program by having to dip into their
19 own cash assets?

20 A. I'm not sure I understand what the question
21 was.

22 Q. I will try to find a way to put it that you
23 do understand, sir.

24 Was their position that they only wanted to

1 services at-risk requirements as expressed in the
2 Cooperative Mail Rule?

3 A. I think I told both Mr. Lyon and Mr.
4 Melikian that I thought, given the contract and the
5 pro forma, which was part of the contract, that the
6 language in 13.2 would satisfy the postal service's
7 Cooperative Mail Rule, and I still believe that.

8 Q. Did you tell them in words, substance or
9 effect, that you had utilized very similar
10 provisions in previous contracts that you had
11 prepared for either fund-raisers or nonprofits?

12 MR. NAHIGIAN: Objection to the form of the
13 question.

14 A. I certainly, I think, said that I had
15 drafted contracts which had similar provisions in
16 them.

17 Q. Did you tell either Mr. Lyon or Mr.
18 Melikian in words, substance or effect that
19 provisions very similar to those appearing in the
20 Shriners agreement, and particularly in Paragraph
21 13.2 of the Shriners agreement, were common in the
22 industry?

23 MR. NAHIGIAN: Objection to the form of the
24 question.

1 A. No.

2 Q. Did you tell either Mr. Lyon or Mr.
3 Melikian in words, substance or effect that
4 provisions similar to those used in the Shriners
5 agreement had never been objected to or challenged
6 by the postal service?

7 MR. NAHIGIAN: Objection.

8 A. Provisions providing for additional
9 mailings or provisions providing for list rental
10 income to be used to satisfy any kind of shortfall,
11 yes.

12 Q. Now, putting aside whether you think that
13 there's a significant difference or not between a
14 provision simply providing that income from rental
15 or exchange of a donor list can be used as security
16 or collateral to satisfy a nonprofit's payment
17 obligations as opposed to a provision which gives
18 the nonprofit the right to remit the fund-raiser as
19 its sole source to the income from such donor list
20 use, were you aware, sir, in fact, at that time, of
21 any fund-raiser agreement that either you or anybody
22 else had prepared which remitted a for-profit
23 fund-raiser for payment solely to the proceeds to be
24 realized from rental or exchange of a donor list and